

No. 9(1)81-8Lab/4986.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Bharat Carpets Ltd., Industrial Area, Faridabad:—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

References Nos. 228, 229, 235, 238 and 239 of 1979

*between*

S/SHRI SURESH KUMAR, AVADH KISHORE, UMESH MISHRA, GANESH JHA AND BHROSI LAL WORKMEN AND THE MANAGEMENT OF M/S BHARAT CARPETS LIMITED, INDUSTRIAL AREA, FARIDABAD

Present—

Shri K.R.R. Pillai, for the workmen.

Shri S.K. Sharma, for the management.

AWARD

This judgement will dispose of connected references No. 228, 229, 235, 238 and 239 of 1979 which have been consolidated on the request of the parties to avoid duplication of work, there being common points of law and fact involved in all the cases. Evidence was recorded in reference No. 228 of 1979.

These disputes were referred for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the term of reference in each case being the same :—

“Whether the termination of services of the workman concerned was justified and in order ? If not, to what relief is he entitled ?”

On receipt of the order of references, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 13th December, 1979 :—

- (1) Whether the reference is barred by an arbitration award ?
- (2) Whether the reference is bad as alleged in preliminary objection No. 2.
- (3) Whether the reference is vague and is bad, therefore, where the Government have not applied their mind in referring the dispute ?
- (4) Whether the C.I.T.U. union has no *locus-standi* and is incompetent to raise the demand ?
- (5) Whether the reference is bad for pick and choose of the portion of the Arbitration Award ?
- (6) Whether the workman is in the habit of committing grave and serious acts of misconduct ?
- (7) Whether the domestic enquiry is fair, proper and just in accordance with the principles of natural justice ?

- (8) Whether the termination of services of the workman was justified and in order?
- (9) Whether the workman is gainfully employed ? If so, to what effect ?
- (10) Relief.

*Issues No. 1, 2, 3, 5 and 7 were treated as preliminary and the case was fixed for the evidence of the management, who examined Shri L.N. Joshi, their Administrative Manager as MW-1 and Shri K.K. Karoli as MW-2 and closed their case. On behalf of the workmen appeared Shri Suresh Kumar as WW-1 and Shri Umesh Mishra as WW-2. Arguments were heard. Now I give my findings issue-wise :—*

*Issues No. 1, 2, 3, 5, 6 and 9.—No evidence was produced by the management to prove these issues, nor any argument was advanced. Therefore, these issues are decided against the management.*

*Issue No. 7—MW-1 stated that on 19th September, 1978 an incident of violence had taken place in the factory. Some Officers and Directors received injuries in that incident. Some workmen had also received injuries there. The concerned workmen S/Shri Bharose Lal, Ghanesh Jha, Suresh Kumar, Avadh Kishore and Umesh Mishra were involved in that incident. They were chargesheeted. They did not receive the chargesheets sent to them by post and the same were received back undelivered. Chargesheets were got published in a local Newspaper titled as "Shere Haryana". Enquiries were ordered against each of the concerned workman. Intimation of holding enquiry was sent to them separately. That intimation was also got published in the same Newspaper, and enquiry was held. The workmen did not participate in the enquiry. The Enquiry Officer gave another opportunity to these workmen when they did not turn up on the first date of hearing. The intimation of the adjourned date was sent to them by registered post and that intimation was also got published in the same Newspaper. The management examined witnesses and produced documents before the Enquiry Officer. The Enquiry Officer gave his findings to the management. All the workmen were found guilty of the charges levelled against them. The management examined the findings of the Enquiry Officer and dismissed the workmen. He further stated that intimation of dismissal was sent by registered post to them and also published in "Shere Haryana". A dispute regarding suspension of these five workmen was referred to the Arbitrator who finally gave his award. The witness produced documents Ex. M-1 to M-40 attached to reference No. 228, Ex. M-1 to M-45 in reference No. 229, Ex. M-1 to M-40 in reference No. 235, Ex. M-1 to M-46 in reference No. 238 and Ex. M-1 to M-41 in reference No. 239. In cross-examination he stated that he was not present in the factory on 19th September, 1978. He had not seen the workmen committing the violence as he was not present at that time. He did not remember the date of enquiry. The place of enquiry was fixed at 33, Lajpat Nagar. It was selected considering the violence. The enquiry concluded on 21st December, 1978. The enquiry had been entrusted to the Enquiry Officer earlier to making payment of suspension allowance to the workman. The fact of enquiry had been mentioned in the written statement filed before the Arbitrator. Copies of Newspaper were also produced before the Arbitrator. The Newspaper had a wide circulation. They did not keep Newspaper for reading of the workmen in the canteen. There was no library for the workmen. There was no colony of the workmen. He could not tell the place of living of most of the workmen. Newspaper and notices were displayed at the factory gate regarding enquiry. He was arrested on 22nd or 23rd September, 1978. MW-2 stated that he was appointed Enquiry Officer to enquire into the charges levelled against the concerned workman. The date of enquiry was fixed at his suggestion. The date of enquiry and his appointment was got published in the News paper "Shere Haryana". That publication was Ex. M-16 and M-21 in reference number 228, Ex. M-21 and M-26 in reference number 229, Ex. M-16 and M-21 in reference number 235, Ex. M-21 and M-27 in reference No. 238 and Ex. M-17 and M-22 in reference No. 239. The workmen did not appear on the date fixed. He gave two more chances to the workmen to participate in the enquiry, when they did not turn up he proceeded ex parte. He sent letter*

to the workmen and got it published in the Newspaper. The workmen did not come even thereafter. He had left instructions with the Manager to tell room number of enquiry in case the workmen turn up. He further stated that the enquiry proceedings were in his hand. Statements of witnesses were recorded by him correctly. The proceedings were signed by him as well the representative for the management. He gave finding in every enquiry after considering the statement of witnesses and documents. All the workmen were found guilty of the charges. Documents were Ex: M-16, M-21, M-22 and M-25 to M-29 in reference No. 228, Ex. M-21, M-26, M-28 and M-30 to M-34 in reference No. 229, Ex. M-16, M-21, M-22 and M-25 to M-29 in reference No. 235, Ex. M-22, M-27, M-28 and M-31 to M-35 in reference No. 238 and Ex. M-17, M-22, M-23 and M-26 to M-30 in reference No. 239. In cross-examination he stated that he had received his appointment letter Ex. M-16. I had given my concurrence of the date to the management. The venue of the enquiry was fixed out of Faridabad because there was apprehension of the breach of peace. Enquiry was first fixed on 16th November, 1978 and then on 21st December, 1978. He himself gave letters to the workmen for appearing before him on the date of enquiry which was Ex. M-22 in reference No. 228. It was sent by registered A.D. post by him and was received back undelivered with the endorsement of the Postman as "refused". Ex. M-23 was posted by the management. Enquiries proceedings were not sent or published by him.

WW-1 stated that he joined service on 9th June, 1978. On 29th September, 1978, he was in 'C' shift starting from 12.30 A.M. He was suspended. He did not receive any letter from the management after 19th September, 1978. His address was village Palla, P.O. Tilpat, district Faridabad. No enquiry was held, nor charges were levelled against him. He did not receive any letter from the Enquiry Officer for participation in the enquiry. He did not know if there was any Newspaper named "Shere Haryana". On 19th September, 1978, Shri Banwari Lal General Secretary was attacked by Shri L.N. Joshi, Shri Lekh Ram and 1/2 other persons. He further stated that attended arbitration proceedings after lifting of lock out. The management also attended arbitration proceedings. The management did not give any letter at that time. He did not receive copy of enquiry proceeding, nor any show-cause notice or dismissal letter. He used to get subsistence allowance, payment of which was received in the factory or in the office of the Conciliation Officer. He was not informed about the enquiry at that time. He served demand notice but did not appear during conciliation proceedings. He read Newspaper Nav Bharat and Hindustan Times. He was suspended on 20th October, 1978. He was member of the union previously but these days he was General Secretary. He learnt about his dismissal from the Labour Inspector,—*vide* letter Ex. W-1. He did not attend duty on 1st September, 1978, copy of attendance card was Ex. W-20. In cross-examination he admitted it as correct that at the time of joining service he filled enrolment form and in the same his address was given as Suresh Kumar s/o Naresh Jha, P.O. Kurshednianmi, village Dasot, district Darbhanga (Bihar). He gave Tejpal Colony Sarai Khawaja, P.O. Amar Nagar, Faridabad as his local address. He also admitted that he did not give information about change of address to the management. He replied that he did not receive suspension order but learnt about it from daily Hindustan Times in which it was printed. He could not give the date and month of paper. He did not try to find out the case of suspension from the management. He did not know if Ex. M-3 and other letters were sent by the management to him on his Tejpal colony address. He further stated that he was not living in that colony in 1978. He denied the suggestion that he had learnt about the date of domestic enquiry from the Arbitrator, but admitted that he learnt about the written statement filed before the Arbitrator. He did not try to find out from the management about the enquiry whenever he went to his for collection of subsistence allowance but he went only once in the factory for that purpose. He did not know if there was any assault case in the factory on 19th September, 1978. He admitted that he was arrested. He was not present at the time of attack on Shri Banwari Lal. He knew it from the police case. In Ex. W-2 in the first column the cutting was in his hand which was scored of some earlier writing by him. He admitted that Ex. W-2 was not kept by him in the same position as was issued by the company. He denied the suggestion that he did not raise any demand on the management.

WW-2 stated that he joined the factory on 19th February, 1977 as a helper. He was in general shift on 19th September, 1978 but he was absent from the factory on that date. He was suspended. He did not receive any letter from the management after 19th September, 1978. No domestic enquiry was held against him, nor he received any intimation from the Enquiry Officer for his participation. He had not seen paper "Shere Haryana". Shri L.N. Joshi, Shri Lekh Ram and 2-3 other persons were arrested on the allegation of attack on Shri Banwari Lal on 19th September, 1978. He further stated that he attended arbitration proceedings and he was not given chargesheet or intimation of domestic enquiry at that time. He did not receive copy of enquiry proceedings. He was not given any show-cause notice or dismissal order. He received subsistence allowance during suspension period which was paid some times in the factory and some times in the Conciliation Office. He was living at Faridabad for whole the time. He could read Hindi. He was a member of the union for which the management was annoyed. He learnt about his dismissal from the Conciliation Office. In cross-examination he admitted that he filled in enrolment form at the time of his entry into service. His permanent address given in the form was Village Ghanshyampur, Tehsil Bahera, District Dharbhanga, Bihar, local address was given as Sarai Khawaja, P.O. Amarnagar Faridabad. He denied that he refused letter Ex. M-3, M-18, M-23 and M-35. His father's name was Shri Daya Kant Mishra. Shri Bhim Singh was his landlord but he was not related to him. He did not know if the management filed any written statement before the Arbitrator. He did not enquire from the management about the domestic enquiry. He served demand notice upon the management but he did not know if the demand notice was given before or after dismissal but the same was given after the arbitration proceedings. On 19th September, 1978, he did not go for his duty. He could not tell if there was any assault in the factory. On 20th September, 1978 when he went for duty there was a huge contingent of police and there he learnt that there had been a assault case on the previous date. He admitted that he was arrested for the alleged occurrence on 19th September, 1978. He admitted that he went to the factory for collection of his subsistence allowance but could not tell his number of visits for the purpose. Normally he did not read a newspaper. He had never seen paper "Shere Haryana". Demand notice was sent by him ordinary post. He admitted that there were Certified Standing Orders but he could not read the same. He denied the suggestion that his dismissal came into being after chargesheet and domestic enquiry.

The representative for the management argued that there had been violence in the factory and the concerned workmen were suspended which matter was referred to the arbitration of Shri M. Kuttappan, I.A.S. the then Secretary to Government of Haryana, Labour & Employment Department who gave his arbitration award. Under issue No. 2 of which he held that the workers suspended under charges of violence, beating or disorderly behaviour and who were arrested or against whom warrants had been issued on criminal charges will remain suspended till the domestic enquiry was completed. He further argued that the chargesheeted workmen were informed of the charges on the address given by them in their enrolment forms. I find that Letters were sent to them by registered A.D. post which were received backundelivered with the remark of the Postman as "refused" and this endorsement showing call by him on different dates to the addresses. The management placed on record original letters alongwith postal receipts on each file. To prove violence and disorderly behaviour, the management placed on record copy of FIR No. 22 dated 19th September, 1978 registered under section 148, 149, 427, 506, 323, 345, 332, 356, 307, and 379 of IPC. The management published chargesheet and names of the concerned workman in a local Hindi Newspaper "Shere Haryana" in its issue dated 16th October, 1978 calling upon the workman to submit their explanation. No explanation was received, therefore, the management appointed Shri K.K. Karoli Enquiry Officer. The intimation of enquiry was sent to the concerned workman through registered A.D. covers and a notice was also published in the same News paper in its issue dated 26th October, 1978. The workman did not attend the enquiry proceedings. The Enquiry Officer did not proceed *ex parte*. Another notice was published in the local newspaper in its issue dated 7th December, 1978. This time also the workman did not attend the enquiry proceedings and the Enquiry Officer proceeded

*ex parte.* The enquiry was conducted on a number of dates and finally after its conclusion he submitted the enquiry report along with other papers to the management. The management after considering the same passed order of dismissal which were sent to the concerned workman by registered A.D. post but received back undelivered. The management got published dismissal orders in the Newspaper, dated 1st May, 1979 in "Shere Haryana". He also argued that the management in their written statement filed before the Arbitrator has referred in para 32, 36 about the domestic enquiry and publication of notices in "Shere Haryana".

The representative for the workmen argued that the workmen were not informed of the charges and the enquiry by the management. As regards the Newspaper he stated that it was not a daily paper and its circulation was not proved by the management. He further argued that the management cocked up false criminal cases against the workmen. He cited AIR 1968 Bombay 358 in which it is held as under :—

"Summons by registered post returned "refused" *Ex parte* decree—Statement on oath by defendant that Summons was not tendered. Failure to summon postman—Sufficient ground for setting aside decree".

Although presumption of correctness is attached to a report made by a public servant in the discharge of his official duties, however, the management went further in publishing the chargesheet and notice of enquiry in a newspaper. In support of it the representative for the management argued that the action of the workmen in not joining domestic enquiry was deliberate. Letters were sent to them on their given addresses. So much so notices were published in the local newspapers a number of times. In 1961 IFLR (S.C.) page 183 it is held "where charge-sheets sent to workmen returned unserved, the proper course for the company is to publish notices in some newspapers in the regional language, in the absence of a provision in the Standing Orders for their display in the Notice-board, of the company. When that course is not adopted it must be held that the workman had no notice of the charges against them and the date by which they had to submit their explanation and the date of enquiry".

I have gone through the enquiry files and find postal receipts, undelivered registered letters, issues of newspaper and enquiry proceedings. The enquiry was held on a number of dates as given above. This process continued over a period of more than three months. I find that the management and the Enquiry Officer have done their best to inform the workmen of the charges and the date of enquiry but the workmen did not participate. In such circumstances no course was left except to proceed *ex parte*, therefore, I do not find any ground to vitiate the enquiry. This issue is decided in favour of the management.

*Issue No. 4.*—The matter under reference is under section 2-A and there is no question of taking up of the demand by the union as such this issue is decided accordingly.

*Issue No. 8.*—The parties advanced arguments on the punishment issue that in case the enquiry was held to be proper what was the justified quantum of punishment. I have gone through the chargesheet and statement of witnesses recorded during the enquiry as well as the enquiry report which is based on evidence. It is interesting to point out that arbitration award published in *Haryana Government Gazette extraordinary*, dated 27th February, 1979 speaks at length the happenings in the factory during that period. I reproduce para I of the finding of the arbitrator as follows :—

"Look out though justified for few weeks, it would have been possible to reopen the factory when things cooled down. When the workers approached the S.D.M., he contacted the management and they wanted an assurance from the workers that they would maintain peace and give normal production. Nearly half of the workers of the factory gave this assurance to the management. The S.D.M. also assured the management that he would provide necessary protection to life and property of the mill,

Perhaps the fear of the management could not have been removed by the assurances. Due to such violence the management closed the factory. Since the workers have not worked during this period, they are not entitled for wages for the lock-out periods. Had there been normalcy in the factory, the workers would have worked and earned their wages. They had to undergo sufferings. To mitigate the financial strains, the workers should receive advance wages of 1½ months which would be adjusted against the production they will give. The workers should make up the loss of production and earn wages as awarded under issue No. 1.

This all leads me to infer that the workmen were involved in cases of misconduct for which punishment prescribed under the Standing Orders was dismissal. I do not find any ground to interfere under section 11-A of the Industrial Disputes Act in the award of punishment by the management on established misconduct alleged against the workmen. This issue is also decided in favour of the management.

While answering the reference, I give my award that the termination of services of the workmen concerned was justified and in order. The workmen were not entitled to any relief.

The 30th April, 1981.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal,  
Haryana, Faridabad.

No. 365, dated 23rd April, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment, Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal Haryana,  
Faridabad.

**No. 9(1)81-8Lab/4988.**--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Government of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Metal India Corporation, Faridabad. —

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 309 of 1979

*between*

SHRI PREM DUTT VAMDEV, WORKMAN AND THE MANAGEMENT  
OF M/S METAL INDIA CORPORATION, FARIDABAD

*Present:*—

Shri Amar Singh Sharma for the workman.

Shri R. C. Sharma for the management.

## AWARD

By order No. 1/97-79/42529, dated 26th September, 1979, the Governor of Haryana referred the following dispute between the management of M/s Metal India Corporation, Faridabad and its workman Shri Prem Dutt Vamdev, to this tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Prem Dutt Vamdev was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 30th March, 1980 :—

1. Whether Shri Prem Dutt is a workman under the Industrial Disputes Act ? If not, to what effect ?
2. Whether Shri Prem Dutt was on probation and or was temporary ?
3. Whether the workman was unfit to work ? If so, to what effect ?
4. Whether the termination of services of the workman was justified and in order ?
5. Relief ?

And the case was fixed for the evidence of the workman, who examined himself as WW-1 and closed his case. Then the case was fixed for the evidence of the management, who examined Shri K. K. Tiwari as MW-1 and Shri Rohtash Singh, Gate Keeper as MW-2 and closed their case. Arguments were heard. Now I give my finding issueswise :—

*Issue. No. 1.*—WW-1 stated that he joined this concern at Rs. 600 per month as a skilled turner. In cross-examination he stated that normally he was making tools for the production of cocks.

MW-1 stated that 16 workers were working under him and there was no supervisor or Engineer over him. MW-2 stated that 13-14 workers were working under him and there was no senior officer in the workshop.

My attention was drawn towards Exhibit M-4 appointment letter of Shri Vam Dev. He has shown in the column of examination passed as sixth class. There is no evidence to show his nature of duties. It is nowhere in the statement of management witnesses what kind of control he had over the other workmen. The workman stated that he was appointed as a skilled turner. He was not cross-examined by the management to show that he had any control over the workmen employed by the management and as to what kind of control he had. So much so that not even a suggestion was made on that account. In 1980 II LLJ page 16 in which it is held as under :—

“In the instant case, the Court is invited to hold from the designation of the second respondent as Foreman (Carpentry) that his work is of a supervisory nature without actually letting in any evidence as to the nature of his duties. It is not the case of the management that the second respondent was having any control over the 10 or 12 carpenters whose work he was asked to supervise. It is not their case that the second respondent had any disciplinary control over them or that he was himself sanctioning leave

to the workmen under him. Even accepting the facts spoken to by M.W. as the only evidence on the side of the management, it will only indicate that a particular work, such as shuttering was entrusted to him to be completed with the help of 10 or 12 carpenters, who were daily-rated, in accordance with the designs and specifications given. That will lead to the only inference that the second respondent is the foreman or leader of the team of carpenters who were entrusted with the task of doing the work of shuttering. That will not make the work of the second respondent to be one of supervisory nature. In this view there is no error in the finding of the Labour Court holding that the second respondent to be a workman, as contemplated in Section 2 (s)."

It is also held in 1980 (56) FJR page 408 that where an employee is designated as Foreman but there is no evidence as to the nature of the duties or he had any disciplinary control over the employee working under him or the power to sanction leave to them held he was workman under the Industrial Disputes Act. This issue is decided that he was workman under the Industrial Disputes Act.

**Issue No. 2.**—I have gone through Exhibit M-4 appointment letter. In the order of appointment the workmen is shown as temporary/probationer for six months/years which shall stand extended for three months/years in case he was not removed from service. Appointment was to commence from 27th October, 1978. According to the written statement para 1 he was on probationer/temporary. The management witnesses did not elaborate if the workman was on probation or he was temporary. From the order of appointment the word days is struck off and month and year were allowed to stand in the order. Appointment may be considered for six months and then extendable by three months or for six years and then extendable by three months or three years. However, if the version of the management is accepted then the workman was a temporary workman because there is no stipulation that he will be on trial for six months. I, therefore, hold that the workman was a temporary one because the intention cannot be gathered that he was appointed initially for six years.

**Issue No. 3.**—According to the written statement para 2 the workman was found by the management having some breathing trouble which was detected to be T.B. The workman concerned stated that he was on sick leave and was under treatment of All India Institute of Medical Science and obtained fitness certificate after his recovery. Exhibit M-1 is certificate, dated 27th March, 1979 from Dr. S.K. Mishra, Registrar, OPD counter signed by Medical Superintendent that the workman was suffering from Pulmonary T.B. The certificate, Exhibit M-4, dated 27th April, 1979 is from the same Doctor in which the workman was declared fit to resume his duties w.e.f. 28th April, 1979. This issue is decided accordingly.

**Issue No. 4.**—The concerned workman stated that he worked upto 12th May, 1979 but his services were terminated on that date. He admitted that he had infection in his lungs which had been cured. M.W.-1 stated that the workman was suffering from T.B. The other workmen had objected for keeping him on duty. Letter Exhibit M-2 was written to him. He further stated that letter, Exhibit M-6 was sent to the workman by U.P.C and Exhibit M-5 was given by the management at the time of conciliation. Demand notice is dated 12th May, 1979 whereas Exhibit M-6 is dated 16th July, 1979 operative para of which runs thus:—

It is regretted that you have not taken any note of our requirement as to submit fitness certificate of Chief Medical Officer of ESI Hospital

You are again being given a period of seven days to do the needful otherwise your name will be dropped from the rolls without any reference to you.

Exhibit M-9 is attendance register in which the name of the workman is shown as number 1 in the month of January and so in the month of February and March. Whereas in the month o f

of April his name does not find place in the register. He is shown at the bottom of the register in the month of May and present upto 5th and then absent upto 9th. Then there is a line in the column. It is interesting that the ink of this column is different from the ink used to write names and mark attendance in all the other columns. His name was not carried in the month of June or July, therefore, the version of Exhibit M-6 of the management is belied. In fact his name was dropped from April, onwards.

The representative for the management argued that because the workman was a probationer, therefore, his name was struck off has no force because his name was not struck off on account of unsatisfactory work or surplus age. As regards want of fitness certificate the same was with the management and produced by it as Exhibit M-8. The workman further produced Exhibit W-1 certificate from All India Institute of Medical Science retriating their earlier fitness certificate referred above. It was out of tune for the management to demand a certificate from ESI Doctor because leave was sanctioned by the management on the certificate of Dr. S.K. Mishra of the All India Institute of Medical Science who ultimately declared the workman as fit. This issue in these circumstances is decided against the management.

**Issue No. 5.**—The workman is entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated 30th March, 1981.

M.C. BHARDWAJ,

Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 367, dated 23rd April, 1981.

Forwarded, (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Ghandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)81-8Lab/4990.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S Free Wheels India Ltd., Faridabad.

BE FORE SHRI M.G. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA

Reference No. 362 of 1978

*Between*

SHRI BAL KISHAN, WORKMAN AND THE MANAGEMENT OF M/S. FREE WHEELS INDIA LTD., FARIDABAD.

*Present:*—

Shri S.R. Gupta, for the workman.

Shri R.N. Rai, for the management.

## AWARD

By order No. ID/FD/129-78/38688 dated 24th August, 1978 the Governor of Haryana referred the following dispute between the management of M/s. Free Wheels India Ltd., Faridabad and its workman Shri Bal kishan, to this Tribuanl, for adjudication, in exercise of the powers conferred by clause(d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Bal Kishan, was justified and in order? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 7th December, 1978 :—

1. Whether the workman lost his lien by remaining absent for a longer period ?
2. Whether the termination of services of the workman was justified and in order  
If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management who examined Shri B.P. Singhal as MW-1 and closed its case. Then the case was fixed for the evidence of the workman, who examined himself and closed his case. Arguments were heard. Now I give my finding issueswise :—

**Issue No. 1 :—**MW-1 stated that he knew the workman. The management did not terminate his services rather he absented himself. Certified Standing Orders were applicable to the factory copy of which was Ex. M-1. He further stated that the wokmen had struck work from 8th April, 1978 to 11th May, 1978. Strike was calle d off after a settlement. The workman were to join duty on 12th May,1978 after the strike. The concerned workman did not turn up upto 23rd May, 1978 when his name was struck off from the rolls. A letter copy Ex. M-2 was sent to him which was received back undelivered which was Ex. M-3. In the attendance register the workman is marked on strike upto 11th May, 1978 and from 12th May, 1978 to 23rd May, 1978 he is shown as absent. He came for work on 30th May, 1978 when he was told that his name had been struck off and information to that effect had been sent to him by post. The workman did not give anything as explanation or medical certificate etc. In cross examination he stated that the workman did not show medical certificate as W-1 on 30th May, 1978. The management had displayed notice of settlement for calling off strike on the gate. It was displayed by the union on their notice board. He had no proof that the workman had received information about the settle-  
ment. No enquiry was held into absen ce.

The concerned workman stated that a stirke had taken place in the factory. He had gone to his house to leave his family members. He fell sick there. He could not come when the factory re-opened. He came to the factory on 29th of May. Doctor had advised him to resume duty on 31st of May. The management did not give him duty and asked to collect his dues. He had not received any intimation from the management that the strike had ended. The management had sent a letter asking him to receive his dues. It was receiv-  
ed by him at the time he was ready to leave from his house for the factory. In cross examination he stated that he was a resident of district Gorakhpur. When he went to his house he had told the management that he was going there. There he fell ill but did not sent any information to the management, nor sent any medicoal certificate as his residence was in a village. He denied the suggestion that he received certificate Ex. W-1 after receipt of letter from the management.

The respresentative for the management argued that it was a case of loss of lien by remaining absent and the action of the management was under clause 13(F) of the Certified

**Standing Orders.** He cited 1979 ILLJ230, 1979 IILLJ 186, 1977 I LLJ 823, 1967 IFLI page 259, 1963 IFLR page 340. On the other hand the representative for the workman argued that it was a case of malafide on the part of the management as it did not inform the workman to join duties. He also argued that the management should have held enquiry in the case and sought explanation from the workman in the cause of absence of the workman. He cited 1979 I LLJ page 257 and 1980 II LLJ page 469.

There is no dispute about the facts of the case. It will be proper if the relevant clause of the Certified Standing Orders is gone into. It runs thus :—

13(f): A workman who absents himself without leave for eight consecutive days or more will be deemed to have left the service of the company without notice thereby terminating his employment and in such a case the employment will be automatically terminated and the company may or may not give any notice informing such termination. If the workman with in four days thereafter offers any explanation to the satisfaction of the Departmental Head- his absence may be converted into leave without pay and he may also be liable to be posted, on similar or any other inferior job carrying lower basic wages or being posted in the training and allocation centre on lower basic rate. If, however, no such explanation is offered within the time before mentioned, the workman will not be entitled to be excused even though his absence may have been due to illness or some other reason whatsoever.

In 1979 I LLJ it is held as under :—

“According to Standing Order 17(h) (i) of the petitioner-company, where an employee remained absent for more than eight days after the leave granted to him, his services would stand automatically terminated”.

In 1967 (15) IFLR it is held as under :—

“Where a standing order provides that a workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens”.

In 1977 I LLJ it is held :—

“The proper standing order applicable to the present case was Standing Order No. 9(3) and not Standing Order No. 15(28) read with Standing Order No. 16. Besides the Supreme Court, in the National Engg. Co. (AIR 1968 SC 33) case, had clearly held in somewhat similar situation that in cases of alternative provision in the standing orders the employer was free to resort to any one of the provisions unless it was shown that resort to one particular was due to malafide against the respondent and, in any case, it cannot be said that Standing Order No. 9(3) was not applicable on the facts and circumstances of the present case”.

In the case reported as 1979 I LLJ page 257 relied by the workman the management treated absence during strike as abandonment from service and struck off the names of workers from the muster rolls but in the instant case the workman was not treated as absent during the period of strike. In 1980 IILLJ page 469 the workman was on leave upto 19th November, 1970 he should have resumed duty on 20th November, 1970. He made an application on 24th November, 1970 that he had been taken ill. In such circumstances it was held that the explanation should have considered by the management but in the present case the workman did not inform the management of his absence within the time prescribed in the relevant clause of the Standing Orders. He has admitted into his statement that he did not send any information to the management from his house. It is also admitted by him that he

reported for duty to the management on 31st of May. It was not incumbent upon the management to inform the workman about re-opening of the factory. When the other workmen joined their duties on 12th May, 1978 the concerned workman should have either joined duties or applied for leave. He had admitted that he had received a letter from the management asking him to receive his dues and that his name had been struck off. Thus he came to the factory after this information. I, find the action of the management according to the Certified Standing Orders. No malafide has been proved by the workman, therefore, this issue is decided in favour of the management.

**Issue No. 2 :—**Due to the finding of issue No. 1 in favour of the management, there is no necessity to decide this issue.

While answering the reference, I give may award that the management did not terminate the services of the workman, rather on the other hand the workman lost his lien on the job by remaining absent. The workman is not entitled to any relief. I order accordingly.

Dated the 31st March, 1981.

M. C. BHARDWAJ  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.

No. 368, Dated 23rd April, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.

The 19th May, 1981

**No. 9(1)81-8Lab./5313.—**In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Bharat Carpets Ltd., Industrial Area, Faridabad.

**BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL  
TRIBUNAL, HARYANA, FARIDABAD**

**Reference No. 230 of 1979  
*between***

**SHRI KAUSHAL KUMAR WORKMAN AND THE MANAGEMENT OF  
M/S. BHARAT CARPETS LIMITED, INDUSTRIAL AREA, FARIDABAD**

**Present—**

Shri K.R.R. Pillai, for the workman.

Shri S.K. Sharma, for the management.

#### **AWARD**

By order No. 113-79/34694, dated 7th August, 1979 the Governor of Haryana referred the following dispute between the management of M/s. Bharat Carpets Limited, Industrial Area, Faridabad and its workman Shri Kaushal Kumar, to this Tribunal for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Kaushal Kumar was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 4th January, 1980 :—

1. Whether the reference is barred by an arbitration award ?
2. Whether the reference is barred as alleged in preliminary objection No. 2. ?
3. Whether the reference is vague and is barred therefore where the Government have not applied their mind in referring the dispute ?
4. Whether the CITU union has no focus-standi and is incompetent to raise the demands ?
5. Whether the reference is bad for pick and choose of the portions of the arbitration award ?
6. Whether the workman is in the habit of committing grave and serious acts of misconduct ?
7. Whether the domestic enquiry is fair, proper and just in accordance with the principles of natural justice ?
8. Whether the termination of services of the workman was justified and in order ?
9. Whether the workman is gainfully employed, If so, to what effect ?
10. Relief.

And the case was fixed for the evidence of the management who examined Shri Lalit Joshi — Administrative Manager as M.W.-1 and Shri K.K. Karoli as M.W. 2 and closed their case. Then the case was fixed for the evidence of the workman who examined himself as W. W. 1 and closed his case. Arguments were heard. Now I give my finding issues-wise :—

**Issues No. 1 to 6 and 9.**—The representative for the management made a statement that he did not press these issues, hence these issues are decided against the management.

**Issue No. 7.**—M.W. 1 stated that there had been an incident of serious violence on 19th September, 1978. The concerned workman was involved in that incident. He was charge-sheeted,—*vide* Exhibit M-1. It was sent to him by registered A. D. post on his permanent and present address,—*vide* Exhibit M-2. It was received back undelivered with the postal remark “refused” which was Exhibit M-3 and M-4. Copies of other reports against the workman and some others were, Exhibit M-5 to M-13. Shri R.N. Gupta and Shri Pritam Singh had received injuries. Copies of medical reports were Exhibit M-14 and M-15. An F.I.R. was lodged regarding incident. Copy of FIR was Exhibit M-16. As the workman did not receive charge-sheet it was published in a local newspaper “Shere Haryana” copy Exhibit M-19. It was also received back undelivered which was Exhibit M-20 A. D. form Exhibit M-21. Shri K.K. Karoli was appointed Enquiry Officer to hold enquiry into the charges against the workman concerned. The date of enquiry was also published in the same newspaper copy was Exhibit M-22. The Enquiry Officer had also given opportunity to the workman,—*vide* letter Exhibit M-23 which was also received back undelivered and was Exhibit M-24 and M-25. Dates of enquiry were published by the Enquiry Officer in the newspaper dated 7th December, 1978. In cross examination he stated that he was not on duty on 19th September, 1978. He came to know for the incident through Shri Bakshi Senior Executive who had lodged an FIR. He further stated that addresses of the workman were obtained from his personal file. “Shere Haryana” was local paper. He

could not give its area of circulation. He did not effect service of the workman at the time of arbitration proceeding. The factory remained closed for two months. MW-2 stated that he was appointed Enquiry Officer to enquire into the charges levelled against the concerned workman, vide Exhibit M-18. Enquiry proceedings were Exhibit M-40 running in 11 pages. The workman did not participate in the enquiry. Letters were sent for the date of enquiry to the workman which was Exhibit M-23. Letter was received back undelivered which was Exhibit M-24 and A.D. M-25. Information of enquiry, vide Exhibit M-26 was also issued. Information was got published in the local newspaper, therefore, he proceeded ex-parte against the workman. He considered the evidence of the enquiry and submitted his finding to the management which was Ex. M-41. In cross-examination he stated that he had given letter to the management for despatch to the workman. The expenses of publication in the newspaper were borne by the management. He had sent letter to the workman by registered A.D. post. He did not send copy of enquiry proceedings to the workman.

WW-1 stated that on 19th September, 1978 he was in day shift. He was suspended. Suspension allowance was paid to him in the factory as well in the conciliation office. His address was C/o CITU 2/21 Gopi Colony, Faridabad. He had received no notice from the management about the incident of 19th September, 1978. No enquiry was held against him, nor he received any letter from the Enquiry Officer. He did not read newspaper "Shere Haryana". The management did not give any letter at the time of arbitration. He did not receive any show cause notice from the management. At the conciliation meeting none appeared from the management. He was member of the executive committee of the union. In cross examination he admitted his signatures on Ex. M-40 but he had informed the management about the change of his address. That address was given in reply to the chargesheet. He denied the suggestion that there was a violence in the factory on 19th September, 1978. Letters Exhibit M-3, M-20, M-24, M-35 and M-35-A were never offered by the Postman to him. He did not know the reason of suspension, nor he tried to know the reason from the management. He did not know if newspaper "Shere Haryana" was published from Faridabad. He read Hindustan Times and Nav Bharat Times. He admitted that Certified Standing Orders were applicable in the factory and copy was Exhibit M-41.

The representative for the management argued that there had been violence in the factory and the concerned workman was suspended which matter was referred to the arbitration of Shri M. Kuttappan, I.A.S. the then Secretary to Government of Haryana Labour and Employment Department who gave his arbitration award. Under issue No. 2 of which he held that the workers suspended under charges of violence beating or disorderly behaviour and who were arrested or against whom warrants had been issued on criminal charges will remain suspended till the domestic enquiry was completed. He further argued that the charge-sheeted workman was informed of the charges on the address given by him in his enrolment forms. I find that letters were sent to them by registered A.D. post which were received back undelivered with the remark of the postman as "refused" and this endorsement showing call by him on different dates to the addressee. The management placed on record original letters alongwith postal receipts on the file. To prove violence and disorderly behaviour, the management placed on record copy of FIR No. 22, dated 19th September, 1978 registered under section 148, 149, 427, 506, 323, 345; 332, 356, 307 and 379 of IPC. The management published charge-sheet and name of the concerned workman in a local Hindi Newspaper "Shere Haryana" in its issue dated 16th October, 1978 calling upon the workman to submit his explanation. No explanation was received, therefore, the management appointed Shri K. K. Karoli, Enquiry Officer. The intimation of enquiry was sent to the concerned workman through registered A.D. covers and a notice was also published in the same newspaper in its issue dated 26th October, 1978. The workman did not attend the enquiry proceedings. The enquiry Officer did not proceed *ex-parte*. Another notice was published in the local newspaper in its issue dated 7th December, 1978. This time also the workman did not attend the enquiry proceedings and the Enquiry Officer proceeded *ex-parte*. The enquiry was conducted on a number of dates and finally after its conclusion he submitted the enquiry

report alongwith other papers to the management. The management after considering the same passed order of dismissal which was sent to the concerned workman by registered A.D. post but received back undelivered. The management got published dismissal order in the newspaper dated 1st May, 1979 in "Shere Haryana". He also argued that the management in their written statement filed before the Arbitrator has referred in para 32, 36 about the domestic enquiry and publication of notices in "Shere Haryana".

The representative for the worman argued that the workman was not informed of the charges and the enquiry by the management. As regards the newspaper he stated that it was not a daily paper and its circulation was not proved by the management. He further argued that the management cooked up false criminal case against the workman. He cited AIR 1968 Bombay 358 in which it is held as under :-

"Summons by registered post returned "refused"-*Ex parte* decree-Statement on oath by defendant that Summons was not tendered-Failure to summon postman-Sufficient ground for setting aside decree."

Although presumption of correctness is attached to a report made by a public servant in the discharge of his official duties, however, the management went further in publishing the charge-sheet and notice of enquiry in a newspaper. In support of it the representative for the management argued that the action of the workman in not joining domestic enquiry was deliberate. Letters were sent to him on his given addresses. So much so notices were published in the local newspaper a number of times. In 1961 IFLR (S.C.) page 183 it is held "where charge-sheets sent to workmen returned unserved, the proper course for the company is to publish notices in some newspapers in the regional language, in the absence of a provision in the Standing Orders for ther display in the notice board, of the company. When that course is not adopted it must be held that the workman had no notice of the charges against them and the date by which they had to submit their explanation and the date of enquiry".

I have gone through the records and find that the workman was charge-sheeted vide Exhibit M-1 dated 12th October, 1978. Chargesheet was sent to him,—*vide* registered letter Exhibit M-3 which was received back with the remark "refused" to "receive". The address on Exhibit M-3 is C/o Shri Murari Singh Village Palla which was given by the workman in his employment form Exhibit M-40. Enquiry notice, Exhibit M-18 was sent by registered letter Exhibit M-20 at the same address which was also received back undelivered with the remark "has gone out of station." Chargehseet was also published in a local Hindi Newspaper "Shere Haryana" Exhibit M-17 in its issue number 36 dated 16th October, 1978. Enquiry notice was published in the same newspaper, Exhibit M-22 in its issue number 37 dated 26th October, 1978. The Enquiry Officer issued notice Exhibit M-23 by registered post. Exhibit M-40 which was received back undelivered with the remark "gone out of station". Notice of adjourned date was then published by the Enquiry Officer giving date and time of the enquiry in the same newspaper issue number 42 dated 7th December, 1978. Under these circumstances the Enquiry Officer conducted the enquiry *ex parte*. The enquiry proceedings were Exhibit M-40. He submitted his report Exhibit M-41. The management placed on record of the enquiry documents Exhibit M-5 to M-8, M-10 to M-13 copy of letters addressed to the Managing Director by various officials of the compnay narrating happenings of 19th September, 1978. Exhibit M-16 copy of FIR lodged with police station under section 148/149, 427/506, 323/342, 332/353 and 307/379 IPC was also placed on enquiry file. Exhibit M-38 was written statement filed on beha of the management before Shri M. Kuttappan, I.A.S. the then Secretary to Government Haryana Labour and Employment Departments who was an Arbitrator in the industrial dispute about the closure of the factory from 19th September, 1978 to 30th September, 1978. and two other issues. Copy of his award is Exhibit M-39. It is a rule of natural justice that a delinquent must know about the charges and enquiry should be held in his presence. I find from the above facts and circumstances that the management tried its best to inform

the workman of the charges as well the enquiry. So much so the Enquiry Officer also sent notice by registered post on the given address of the workman. He also got published in a local Hindi Newspaper notice of enquiry and also of the adjourned date. This goes to prove that the management did its best to follow the principles of natural justice in informing the workman of the charges and also to associate him in the enquiry. The Enquiry Officer, therefore, was justified in proceeding *ex parte* with the enquiry. I have gone through the enquiry record and various documents referred by me above and find that the finding is based on evidence available on the file. I do not find any reason to interfere in the enquiry and hold this issue in favour of the management.

**Issue No. 8.**—M.W.-1 stated that the Enquiry Officer held the workman guilty of the charges given in his finding. The management considered the enquiry finding and concurred with the same. The dismissal order copy Exhibit M-30 was sent to the workman by post, postal receipt Exhibit M-31 and M-32. The dismissal order was also published in the newspaper dated 1st May, 1979 Exhibit M-37.

I have gone through the chargesheet and statement of witnesses recorded during the enquiry as well enquiry report which is based on evidence. It is interesting to point out that arbitration award published in *Haryana Government Gazette Extraordinary*, dated 27th February, 1979 speaks at length the happenings in the factory during that period. I reproduce para 1 of the finding of the arbitrator as follows :—

“Lockout though justified for few weeks, it would have been possible to reopen the factory when things cooled down. When the workers approached the SDM, the contacted the management and they wanted an assurance from the workers that they would maintain peace and give normal production. Nearly half of the workers of the factory gave this assurance to the management. The SDM also assured the management that he would provide necessary protection to life and property of the mill. Perhaps the fear of the management could not have been removed by the assurance. Due to such violence the management closed the factory. Since the workers have not worked during this period, they are not entitled for wages for the lockout periods. Had there been normalcy in the factory, the workers would have worked and earned their wages. They had to undergo sufferings. To mitigate the financial strains, the workers should receive advance wages of 1½ months which would be adjusted against the production they will give. The workers should make up the loss of production and earn wages as awarded under issue No. 1.”

This all leads me to infer that the workman was involved in case of misconduct for which punishment prescribed under the Standing Orders was dismissal. There is no ground to interfere under section 11-A of the I.D. Act in the award of punishment by the management on established misconduct alleged against the workman. This issue is also decided in favour of the management.

While answering the reference, I give my award that the termination of services of the workman concerned was justified and in order. The workman is not entitled to any relief.

Dated 24th April, 1981

M.C. BHARDWAJ,  
Presiding Officer, Industrial,  
Tribunal, Haryana, Faridabad.

No. 417, dated the 30th April, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.